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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 DOMINEKE ALLEN FERGUSON,  
12  
13 Plaintiff,  
14 v.  
15 NANCY A. BERRYHILL, Acting  
16 Commissioner of Social Security,  
17 Defendant.  
18

Case No. 2:17-cv-03228-SHK

OPINION AND ORDER

19 Plaintiff Domineke Allen Ferguson (“Plaintiff”) seeks judicial review of the  
20 final decision of the Commissioner of the Social Security Administration  
21 (“Commissioner” or the “Agency”) denying his application for child’s disability  
22 insurance benefits (“CDIB”), under Title II of the Social Security Act (the  
23 “Act”). This Court has jurisdiction, under 42 U.S.C. § 405(g), and, pursuant to  
24 28 U.S.C. § 636(c), the parties have consented to the jurisdiction of the  
25 undersigned United States Magistrate Judge. Because the Commissioner’s  
26 decision denying Plaintiff’s CDIB is based on the proper application of the correct  
27 legal standards and supported by substantial evidence, the Commissioner’s  
28 decision is AFFIRMED.

1 **I. BACKGROUND**

2 Plaintiff protectively filed an application for CDIB on July 2, 2014, alleging  
3 disability beginning on October 1, 2006. Transcript (“Tr.”) 159-65.<sup>1</sup> Following a  
4 denial of benefits, Plaintiff requested a hearing before an administrative law judge  
5 (“ALJ”). Tr. 115. Plaintiff appeared and testified at a hearing on January 6, 2016.  
6 Tr. 31-98. Following the hearing, the ALJ “sent medical interrogatories to Ashok  
7 I. Khushalani, M.D., an impartial medical expert in psychiatry . . . .” Tr. 17. In his  
8 responses, Dr. Khushalani indicated that “there are no records between  
9 9/28/2009 to 9/28/2013 for me to formulate an opinion.” Tr. 925. Upon receipt  
10 of Dr. Khushalani’s responses to the interrogatories, the ALJ made them a part of  
11 the record and “proffered the new evidence to [Plaintiff’s] attorney of record on  
12 January 29, 2016.” Tr. 17, 295-97, 923-34. On February 9, 2016, Plaintiff’s  
13 attorney “responded by letter, indicating that she had no comments to the  
14 proffered evidence and did not request for a supplemental hearing.” Tr. 298. On  
15 March 9, 2016, the ALJ determined Plaintiff was not disabled.<sup>2</sup> Tr. 14-25. Plaintiff  
16 sought review by the Appeals Council, however, review was denied, on October 4,  
17 2016. Tr. 1-5, 9-11. This appeal followed.

18 **II. STANDARD OF REVIEW**

19 The reviewing court shall affirm the Commissioner’s decision if the decision  
20 is based on correct legal standards and the legal findings are supported by  
21 substantial evidence in the record. 42 U.S.C. § 405(g); Batson v. Comm’r Soc.  
22 Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is “more  
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24 <sup>1</sup> A certified copy of the Administrative Record was filed on July 11, 2017. Electronic Case Filing  
25 Number (“ECF No.”) 13. Citations will be made to the Administrative Record or Transcript  
page number rather than the ECF page number.

26 <sup>2</sup> Plaintiff later filed an application for supplemental security income (“SSI”) under Title XVI of  
27 the Act on January 31, 2016, which the ALJ reserved judgment on, and returned jurisdiction of,  
28 to the initial determination level because Plaintiff’s SSI application was filed after the January  
2016 hearing. Tr. 17. Accordingly, Plaintiff’s SSI application is not properly before this Court  
and is, therefore, not considered.

1 than a mere scintilla. It means such relevant evidence as a reasonable mind might  
2 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,  
3 401 (1971) (citation and internal quotation omitted). In reviewing the  
4 Commissioner’s alleged errors, this Court must weigh “both the evidence that  
5 supports and detracts from the [Commissioner’s] conclusions.” Martinez v.  
6 Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

7 “‘When evidence reasonably supports either confirming or reversing the  
8 ALJ’s decision, [the Court] may not substitute [its] judgment for that of the ALJ.’”  
9 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting Batson, 359 F.3d at  
10 1196); see also Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (“If the  
11 ALJ’s credibility finding is supported by substantial evidence in the record, [the  
12 Court] may not engage in second-guessing.”) (internal citation omitted)). A  
13 reviewing court, however, “cannot affirm the decision of an agency on a ground  
14 that the agency did not invoke in making its decision.” Stout v. Comm’r Soc. Sec.  
15 Admin., 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). Finally, a court  
16 may not reverse an ALJ’s decision if the error is harmless. Burch v. Barnhart, 400  
17 F.3d 676, 679 (9th Cir. 2005) (citation omitted). “[T]he burden of showing that an  
18 error is harmful normally falls upon the party attacking the agency’s  
19 determination.” Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

### 20 III. DISCUSSION

#### 21 A. Child’s Disability Insurance Benefits

22 For a claimant to qualify for CDIB, the claimant must demonstrate that they  
23 are entitled to those benefits based “on the earnings record of an insured person  
24 who is entitled to old-age or disability benefits or who has died,” and that the  
25 claimant: (1) is the insured person’s child; (2) is dependent on the insured; (3) has  
26 applied for benefits; (4) is unmarried; and (5) is “under age 18; . . . 18 years old or  
27 older and ha[s] a disability that began before [the claimant] became 22 years old; or  
28

1 [the claimant is] 18 years or older and qualif[ies] for benefits as a full-time student  
2 as described in [20 C.F.R.] § 404.367.” 20 C.F.R. § 404.350(a)(1)-(5).

3 **B. Establishing Disability Under The Act**

4 To establish whether a claimant is disabled under the Act, it must be shown  
5 that:

6 (a) the claimant suffers from a medically determinable physical or  
7 mental impairment that can be expected to result in death or that has  
8 lasted or can be expected to last for a continuous period of not less than  
9 twelve months; and

10 (b) the impairment renders the claimant incapable of performing the  
11 work that the claimant previously performed and incapable of  
12 performing any other substantial gainful employment that exists in the  
13 national economy.

14 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
15 § 423(d)(2)(A)). “If a claimant meets both requirements, he or she is ‘disabled.’”  
16 Id.

17 The ALJ employs a five-step sequential evaluation process to determine  
18 whether a claimant is disabled within the meaning of the Act. Bowen v. Yuckert,  
19 482 U.S. 137, 140 (1987); 20 C.F.R. § 404.1520. Each step is potentially dispositive  
20 and “if a claimant is found to be ‘disabled’ or ‘not-disabled’ at any step in the  
21 sequence, there is no need to consider subsequent steps.” Tackett, 180 F.3d at  
22 1098; 20 C.F.R. § 404.1520. The claimant carries the burden of proof at steps one  
23 through four, and the Commissioner carries the burden of proof at step five.  
24 Tackett, 180 F.3d at 1098.

25 The five steps are:

26 Step 1. Is the claimant presently working in a substantially gainful  
27 activity [(“SGA”)]? If so, then the claimant is “not disabled” within  
28 the meaning of the [] Act and is not entitled to [DIB]. If the claimant is

1 not working in a [SGA], then the claimant's case cannot be resolved at  
2 step one and the evaluation proceeds to step two. See 20 C.F.R.  
3 § 404.1520(b).

4 Step 2. Is the claimant's impairment severe? If not, then the  
5 claimant is "not disabled" and is not entitled to [DIB]. If the claimant's  
6 impairment is severe, then the claimant's case cannot be resolved at  
7 step two and the evaluation proceeds to step three. See 20 C.F.R.  
8 § 404.1520(c).

9 Step 3. Does the impairment "meet or equal" one of a list of  
10 specific impairments described in the regulations? If so, the claimant is  
11 "disabled" and therefore entitled to [DIB]. If the claimant's  
12 impairment neither meets nor equals one of the impairments listed in  
13 the regulations, then the claimant's case cannot be resolved at step  
14 three and the evaluation proceeds to step four. See 20 C.F.R.  
15 § 404.1520(d).

16 Step 4. Is the claimant able to do any work that he or she has  
17 done in the past? If so, then the claimant is "not disabled" and is not  
18 entitled to [DIB]. If the claimant cannot do any work he or she did in  
19 the past, then the claimant's case cannot be resolved at step four and  
20 the evaluation proceeds to the fifth and final step. See 20 C.F.R.  
21 § 404.1520(e).

22 Step 5. Is the claimant able to do any other work? If not, then  
23 the claimant is "disabled" and therefore entitled to [DIB]. See 20  
24 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then  
25 the Commissioner must establish that there are a significant number of  
26 jobs in the national economy that claimant can do. There are two ways  
27 for the Commissioner to meet the burden of showing that there is other  
28 work in "significant numbers" in the national economy that claimant

1 can do: (1) by the testimony of a vocational expert, or (2) by reference  
2 to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P,  
3 app. 2 [(“the Listings”)]. If the Commissioner meets this burden, the  
4 claimant is “not disabled” and therefore not entitled to [DIB]. See 20  
5 C.F.R. §§ 404.1520(f), 404.1562. If the Commissioner cannot meet  
6 this burden, then the claimant is “disabled” and therefore entitled to  
7 [DIB]. See id.

8 Id. at 1098-99.

9 **C. Summary Of Analysis By ALJ**

10 With regard to Plaintiff’s qualification CDIB, the ALJ found that Plaintiff  
11 was “[b]orn on September 29, 1991, [Plaintiff] had not attained age 22 as of  
12 October 1, 2006, the alleged onset date (20 C.F.R. 404.102 and 404.350(a)(5)).”  
13 Tr. 20. The ALJ then turned to the five-step sequential evaluation process and  
14 determined at step one, that “[Plaintiff] has not engaged in substantial gainful  
15 activity [(“SGA”)] since October 1, 2006, the alleged onset date (20 C.F.R.  
16 404.1571 et seq.).” Id. At step two, the ALJ found that “[p]rior to attaining age  
17 22, [Plaintiff] had the following medically determinable impairments: history of  
18 attention deficit hyperactivity disorder (ADHD); bi-polar disorder; polysubstance  
19 abuse; and insulin-dependent diabetes mellitus.” Id. After using the “special  
20 technique”<sup>3</sup> at step two, however, the ALJ found that none of Plaintiff’s

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22 <sup>3</sup> The regulations require the ALJ to use a “special technique” to evaluate whether a claimant’s  
23 mental impairments are severe. See 20 C.F.R. § 404.1520a. The Agency “ha[s] identified four  
24 broad functional areas in which [it] rate[s] the degree of [a claimant’s] functional limitation:  
25 Understand, remember, or apply information; interact with others; concentrate, persist, or  
26 maintain pace; and adapt or manage oneself.” Id. at § 404.1520a(c)(3). The Agency rates the  
27 degree of a claimant’s functional limitations in these four areas by “using the following five-point  
28 scale: None, mild, moderate, marked, and extreme. The last point on the scale represents a  
degree of limitation that is incompatible with the ability to do any gainful activity.” Id. at  
§ 404.1520a(c)(4). “If [the Agency] rate[s] the degrees of [a claimant’s] limitation as ‘none’ or  
‘mild,’ [it] will generally conclude that [the claimant’s] impairment(s) is not severe, unless the  
evidence otherwise indicates that there is more than a minimal limitation in [the claimant’s]  
ability to do basic work activities.” Id. at § 404.1520a(d)(1).

1 impairments were severe because none of Plaintiff's "impairments or combination  
2 of impairments . . . has significantly limited (or is expected to significantly limit)  
3 [Plaintiff's] ability to perform basic work-related activities for 12 consecutive  
4 months." Id.

5 In reaching this conclusion, the ALJ specifically found that Plaintiff had only  
6 "mild" limitations in the first three functional areas and that Plaintiff had "no  
7 episodes of decompensation which have been of extended duration in the fourth  
8 area" as a result of Plaintiff's medically determinable mental impairments. Tr. 24  
9 (internal quotation marks omitted). The ALJ, therefore, concluded that  
10 "[Plaintiff] has not been under a disability, as defined in the . . . Act, at any time  
11 prior to September 28, 2013, the date he attained age 22." Tr. 25.

12 In this appeal, Plaintiff raises only one issue: whether the ALJ erred in  
13 rejecting Plaintiff's subjective symptom statements concerning the extent and  
14 severity of his impairments. ECF No. 14, Pl.'s Notice of Mot. and Mot. for Summ.  
15 J.; Mem. of P. & A. in Supp. Thereof ("Pl.'s Mot.") at 4.

16 **D. ALJ's Consideration of Plaintiff's Testimony**

17 Plaintiff argues that the ALJ erred in rejecting his claim by "fail[ing] to  
18 articulate specific and legitimate reason[s] much less clear and convincing reasons  
19 [for] rejecting [his] credible testimony." Id. Plaintiff specifically argues that the  
20 ALJ erred by rejecting his testimony by: (1) using "boilerplate language" that  
21 "yields no clue to what weight the [ALJ] gave [his] testimony"; (2) basing his  
22 finding, at least in-part, "on a belief that [Plaintiff's] testimony is not credible  
23 because it lacks support in the objective medical evidence," which, Plaintiff argues,  
24 "is always legally insufficient."; and (3) basing his finding, at least in-part, on  
25 Plaintiff's ADLs because "the fact that [Plaintiff] had some ability some of the time  
26 to perform something is not reason enough to find him not credible." Id. at 6-9.

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1                   **1. ALJ's Analysis Regarding Plaintiff's Credibility**

2           In assessing the Plaintiff's testimony, for purposes of whether Plaintiff  
3 qualified for CDIB, the ALJ focused on the time period from "September 28, 2009  
4 (the date the claimant attained age of 18) through September 28, 2013 (the date the  
5 claimant attained age 22). Tr. 17. The analysis did not inquire as to whether the  
6 claimant qualified for SSI benefits as those benefits were the subject of a separate,  
7 then-ongoing, process. Id.

8           The ALJ began his analysis of Plaintiff's testimony by noting that Plaintiff  
9 "alleges that he is limited in his ability to work by diabetes mellitus, enlarged liver,  
10 learning disorder, bi-polar disorder, depression[,] and psychotic episode." Tr. 21  
11 (citing Tr. 180). The ALJ also noted that Plaintiff testified that he "was unable to  
12 work because he had problems with concentration and understanding some  
13 things," and "needed additional explanation with certain things." Id. The ALJ  
14 found that Plaintiff's "medically determinable impairments could reasonably be  
15 expected to produce the alleged symptoms; however, [Plaintiff's] statements  
16 concerning the intensity, persistence[,] and limiting effects of these symptoms are  
17 not entirely credible." Id. The ALJ noted several reasons to support this adverse  
18 credibility finding. Tr. 21-23.

19           First, the ALJ noted that "during the relevant period at issue, the objective  
20 evidence and [Plaintiff's] treatment history were inconsistent with [Plaintiff's]  
21 allegations that he was unable to perform any work activity." Tr. 21. The ALJ  
22 observed that, with regard to Plaintiff's physical impairments, Plaintiff was only  
23 seen once during the relevant time period and that the physical examination  
24 conducted during that visit yielded "unremarkable" results and that Plaintiff was  
25 "discharged with the diagnosis of insulin-dependent diabetes mellitus and alcohol  
26 abuse." Tr. 22 (citing Tr. 557-58). The ALJ also noted that although Plaintiff  
27 "was diagnosed with insulin-dependent diabetes mellitus prior to attaining age 22  
28 [citation], there was no evidence of any end organ damage" in the medical record.



1 Id. The ALJ also observed that Plaintiff “stated that he checks his blood sugar 1-3  
2 times a week even though he is aware that he should check it [five] times a day.”  
3 Tr. 21. The ALJ also noted that “although not clearly malingering, the  
4 consultative examiner noted exaggeration of symptoms for financial gain or  
5 malingering could not be excluded.” Tr. 23 (citing Tr. 613). The ALJ concluded  
6 that “the lack of [Plaintiff’s] treatment history or abnormal physical examination  
7 during the relevant time period at issue suggests that [Plaintiff’s] diabetes was  
8 controlled with medication, and his symptoms and limitations were not as severe as  
9 [Plaintiff] alleged.” Tr. 22.

10 Similarly, with regard to Plaintiff’s mental impairments, the ALJ noted that  
11 “the lack of treatment history or aggressive treatment during the relevant period at  
12 issue suggests that [Plaintiff’s] alleged symptoms and limitations due to  
13 [Plaintiff’s] history of ADHD, bi-polar disorder, and history of substance abuse in  
14 remission were not as severe as he purported.” Id. The ALJ noted that besides  
15 “seeing a psychiatrist . . . on and off beginning in July 2007 for his bi-polar disorder  
16 and ADHD . . . there is no evidence showing [that Plaintiff] was seeing any  
17 psychiatrist from the period when he attained age 18 through the date he attained  
18 age 22.” Id. The ALJ added that “a discharge note from . . . November 3, 2011,  
19 shows [that Plaintiff] was diagnosed with bi-polar disorder and depression” but  
20 that Plaintiff “was discharged against medical advice.” Id. (citing Tr. 751). The  
21 ALJ also observed that Plaintiff was seen in October 2012 for mood disorder and  
22 presented as a danger to himself and others and “was discharged with alcohol  
23 abuse.” Id. (citing Tr. 557-58). Finally, the ALJ noted that although Plaintiff  
24 “alleged a learning disability, no doctor has provided such diagnosis” and that  
25 although Plaintiff “was placed on an Individualized Education Plain (IEP), . . . he  
26 did graduate from high school.” Id. (citing Tr. 274, 277, 771-812). The ALJ again  
27 referred to this lack of objective evidence during the relevant time period by citing  
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1 to Dr. Khushalani's inability to assess the severity of Plaintiff's impairments. Tr.  
2 23 (citing Tr. 923-934).

3 Second, the ALJ noted that Plaintiff's ADLs "are inconsistent with his  
4 alleged degree of impairments." Id. The ALJ noted that during the relevant time  
5 frame, Plaintiff "lived alone and adequately cared for himself," was "able to  
6 manage his own finances, as he received general relief and food stamps . . . [and]  
7 admitted to panhandling for money." Id. The ALJ also noted that Plaintiff "reads  
8 newspapers, particularly the sections he enjoys such as comics and sports, and is  
9 able to understand what he reads." Tr. 21. The ALJ also observed that Plaintiff  
10 worked as a janitor for two days, but quit that job. Id. (citing Tr. 611). The ALJ  
11 also pointed to the testimony of Plaintiff's grandmother, that Plaintiff does  
12 "household chores and yard work, but [that Plaintiff] does not have good stamina."  
13 Id. The ALJ concluded that "[i]t appears that [Plaintiff's] limited range of daily  
14 activities is a lifestyle choice and not due to any established impairment." Tr. 23.

15 Third, the ALJ found that Plaintiff's history, which includes "report[s] that  
16 he had been arrested at least [five] times for charges relating to stolen property . . .  
17 shows a greater capacity for planning and carrying out activities than [Plaintiff]  
18 admits," as well as a "propensity for dishonesty and a disregard for societal  
19 norms," which "makes his credibility highly suspect." Tr. 22 (citing Tr. 602).

20 Finally, the ALJ noted that Plaintiff provided inconsistent and contradictory  
21 statements throughout the record. Tr. 22-23. For example, the ALJ noted that  
22 Plaintiff testified that he had never worked, but also reported that he worked as a  
23 janitor for two days before quitting. Tr. 22. The ALJ also noted that Plaintiff  
24 "reported that he had been arrested at least [five] times for charges relating to  
25 stolen property [citation], and elsewhere he reported that he was arrested and jailed  
26 two times or more for petty theft," but "at the hearing, [Plaintiff] testified that he  
27 had a history of petty theft for which he was given a ticket, but did not serve jail  
28 time." Id. (citing Tr. 602, 611). Finally, the ALJ observed that Plaintiff provided

1 conflicting information regarding his education level. Tr. 23. The ALJ specifically  
2 noted that “[a]t times, [Plaintiff] reported the highest grade he completed is  
3 [tenth] grade,” but “at the hearing, he stated he graduated from high school.” Id.  
4 (citing Tr. 181, 274, 277). The ALJ also noted in another portion of her decision  
5 that Plaintiff testified that after he “completed the adult education program, he  
6 attended film school and culinary school,” and stated that “he did not complete  
7 this schooling,” but “that he passed the introductory classes.” Tr. 21.

## 8                   **2.       Standard To Review Plaintiff’s Pain Related Claims**

9           When a claimant has medically documented impairments that “might  
10 reasonably produce the symptoms or pain alleged and there is no evidence of  
11 malingering, the ALJ must give ‘specific, clear, and convincing reasons for  
12 rejecting’ the testimony by identifying ‘which testimony [the ALJ] found not  
13 credible” and explaining ‘which evidence contradicted that testimony.’” Laborin  
14 v. Berryhill, 867 F.3d 1151, 1155 (9th Cir. 2017) (emphases in original) (quoting  
15 Brown-Hunter v. Colvin, 806 F.3d 487, 489, 494 (9th Cir. 2015)). “This is not an  
16 easy requirement to meet: ‘the clear and convincing standard is the most  
17 demanding required in Social Security cases.’” Garrison v. Colvin, 759 F.3d 995,  
18 1015 (9th Cir. 2014) (quoting Moore v. Comm’r Soc. Sec. Admin., 278 F.3d 920,  
19 924 (9th Cir. 2002)).

## 20                   **3.       The Record Supports The ALJ’s Credibility Analysis.**

21           Here, the Court agrees with Plaintiff’s argument that the ALJ’s boilerplate  
22 language at the outset of his adverse credibility finding does nothing to assist this  
23 Court with its analysis of the ALJ’s finding. See Treichler v. Comm’r Soc. Sec.  
24 Admin., 775 F.3d 1090, 1103 (9th Cir. 2014) (finding that “[a]n ALJ’s ‘vague  
25 allegation’ that a claimant’s testimony is ‘not consistent with the objective medical  
26 evidence,’ without any ‘specific findings in support’ of that conclusion is  
27 insufficient for our review” and that this “hackneyed language seen universally in  
28 ALJ decisions adds nothing” to the Court’s analysis of the ALJ’s finding (internal

1 citations omitted)). The Court finds, however, that the mere inclusion of this  
2 boilerplate language was harmless and does not constitute reversible error. See  
3 Laborin v. Berryhill, 867 F.3d 1151, 1154-55 (9th Cir. 2017) (finding “that inclusion  
4 of [similar] flawed boilerplate language is not, by itself, reversible error and can be  
5 harmless. It does not, however, add anything to the ALJ’s determination of either  
6 the RFC or the claimant’s credibility.” (internal citation omitted)).

7 The Court is unpersuaded, however, by Plaintiff’s remaining arguments that  
8 the ALJ erred by finding his testimony not credible because it lacked support in the  
9 objective medical evidence, and that the ALJ erred in her analysis of Plaintiff’s  
10 ADLs.

11 When determining whether the Claimant’s subjective symptom testimony is  
12 credible, “[t]he ALJ may consider inconsistencies either in the claimant’s  
13 testimony or between the testimony and the claimant’s conduct.” Molina v.  
14 Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012). The ALJ may also consider:

15 (1) ordinary techniques of credibility evaluation, such as the claimant’s  
16 reputation for lying, prior inconsistent statements concerning the  
17 symptoms, and other testimony by the claimant that appears less than  
18 candid;

19 (2) unexplained or inadequately explained failure to seek treatment or  
20 to follow a prescribed course of treatment; and,

21 (3) the claimant’s daily activities.

22 Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996).

23 While an ALJ cannot reject the severity of subjective complaints solely on  
24 the lack of objective evidence, the ALJ may nonetheless look to the medical record  
25 for inconsistencies. See Morgan v. Comm’r Soc. Sec. Admin., 169 F.3d 595, 599-  
26 600 (9th Cir. 1999) (finding that “[t]he ALJ provided clear and convincing reasons  
27 for rejecting [the plaintiff’s] testimony” by “point[ing] to specific evidence in the  
28 record—including reports by [the plaintiff’s doctors]—in identifying what

1 testimony was not credible and what evidence undermined [the plaintiff's]  
2 complaints.”).

3 Here, the ALJ pointed to specific evidence in the record that undermined  
4 Plaintiff's testimony and also supplemented the record with additional medical  
5 evidence after the administrative hearing. For example, the ALJ observed that the  
6 consultative examiner noted possible exaggeration of symptoms for financial gain  
7 and that malingering could not be excluded. Tr. 23. The ALJ also pointed to  
8 unremarkable results in Plaintiff's limited examination records during the relevant  
9 time period and the fact that there was no evidence of any end organ damage as in  
10 the medical record as a result of Plaintiff's diabetes. Tr. 22. The ALJ even sent  
11 medical interrogatories to an impartial medical expert in psychiatry after the  
12 hearing, incorporated those answers into the record, proffered the answers to  
13 Plaintiff's attorney, and received written confirmation from Plaintiff's attorney  
14 indicating that she had no comment on those records and that she did not require a  
15 supplemental hearing. Tr. 17, 295-98, 923-34.

16 With respect to not following medical recommendations, the ALJ also noted  
17 specific examples, such as Plaintiff's admission that he checks his blood sugar only  
18 one to three times per week instead of five times per day as Plaintiff acknowledged  
19 he should, and chart notes indicating that Plaintiff discharged from medical care  
20 against medical advice. The ALJ also listed specific examples of Plaintiff making  
21 contradictory statements about his abilities. For example, the ALJ noted that  
22 although Plaintiff alleged a learning disability, no doctor provided such diagnosis  
23 for this and that Plaintiff completed high school and then passed the introductory  
24 classes of film school and culinary school. The ALJ also noted contradictions  
25 between Plaintiff's testimony that he had never worked, with the fact that Plaintiff  
26 worked briefly as a janitor. Tr. 22. The ALJ also highlighted discrepancies in  
27 Plaintiff's testimony regarding his criminal arrest record and found that Plaintiff's  
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1 ability to conduct criminal activity shows a greater capacity for planning and  
2 carrying out activities than Plaintiff admits. Id.

3 Finally, the ALJ listed specific examples of Plaintiff's ADLs contradicting  
4 Plaintiff's allegations of totally disabling impairments. For example, the ALJ noted  
5 that Plaintiff worked as a janitor, does chores and yardwork, lived alone and  
6 adequately cared for himself, managed his own finances and panhandled for money,  
7 read newspapers for pleasure, and was able to understand what he read. Id.

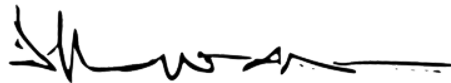
8 Accordingly, this Court finds that the ALJ provided specific, clear, and  
9 convincing reasons for rejecting Plaintiff's testimony by identifying which  
10 testimony the ALJ found not credible and explaining which evidence contradicted  
11 that testimony. As such, the Court has no basis to disagree with the ALJ's  
12 credibility finding or that the ALJ's analysis was incorrect. Therefore, this Court  
13 affirms the ALJ's credibility determination.

#### 14 IV. CONCLUSION

15 Because the Commissioner's decision is based on the proper application of  
16 the correct legal standards and is supported by substantial evidence in the record,  
17 the Commissioner's final decision is AFFIRMED and this case is DISMISSED.

18 IT IS SO ORDERED.

19  
20 DATED: 6/8/2018



21 HONORABLE SHASHI H. KEWALRAMANI  
22 United States Magistrate Judge  
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